Standards of Title Committee Approves Two New Standards

By Denis R. Caron

Denis R. Caron is the chair of the Special Committee on Standards of Title. He serves as vice president of the Commonwealth Land Title Insurance Company.

The Special Committee on Standards of Title has approved two new proposed standards. They are: Standard 18.9 – Home Equity Conversion (Reverse) Mortgage Loans: Unreleased HUD second Mortgage, and Standard 18.10 – Effect of Failure to Release a Multi-Town Mortgage or Other Encumbrance in All Towns Where it was Recorded.

The CBA by-laws require summaries of proposed new standards to be published in the *Connecticut Lawyer.* In this case, however, because of the relative brevity of the two proposed standards, it is appropriate to print them in their entirety. They appear at the end of this article.

Following the publication of this article, there will be a 60-day comment period, during which any interested party is invited to submit comments on the proposed standards. Such comments can be emailed to the committee chair at denis.caron@cltic.com. The committee will review all comments and make any revisions it deems appropriate, and then will present the proposed standards to the Board of Governors for final approval and publication.

The Committee has also approved a revision of Standard 18.5 – Releases of Corrected, Re-recorded, or Modified Mortgages. The revision primarily involves adding an additional circumstance in which a release of a re-recorded release of mortgage will be acceptable. The intent is to expand the scope of the standard to address a fairly common occurrence regarding re-recorded releases. The new provision states:

> Where a recorded mortgage deed is an obvious re-recording of a previously-recorded mortgage and there is no discernible difference between the earlier- and the later-recorded mortgages, a subsequently recorded release which makes reference to either the original mortgage or the mortgage as re-recorded shall be deemed a sufficient release of both instruments.

Please note that revisions of existing standards do not need to go through the same approval process as proposed new standards. Consequently, revised Standard 18.5 is now fully in effect, and interested parties can obtain a copy through the Connecticut Bar Association.

Here are the two proposed new standards:

STANDARD 18.9
Home Equity Conversion (Reverse) Mortgage Loans Unreleased HUD Second Mortgage

The Home Equity Conversion Mortgage (HECM) loan program is administered by the U.S. Department of Housing and Urban Development (HUD). HECM loans are but one form of reverse mortgages. This Standard addresses only HECM mortgages. Typical HECM loan closing documentation includes a first note and first mortgage in favor of the HUD-approved first mortgage lender and a second note and second mortgage in favor of HUD. The two notes may secure different debts. Therefore, the HUD note, and the mortgage securing it, cannot be considered satisfied by the payment of the first note and release of the first mortgage. Title remains unmarketable until the second mortgage on the subject property is released of record.

Comment 1. It is rare that HUD advances any funds under its second note. However, under the HECM program HUD may advance funds to the borrower under its second note if the first mortgage lender fails to perform its obligations under its loan documents and fully advance funds due the borrower. It is this possibility that leaves title unmarketable until the second mortgage is released.

Comment 2. The second mortgage in favor of HUD recites that it is given to secure payments which the Secretary may make to, or on behalf of, the Borrower pursuant to Section 255 of the National Housing Act (42 USC 1715z-20) and the underlying loan agreements between the parties. That Section provides that these advances, as made by HUD, shall not be included in the debt due under the first note unless either (a) the first note has been assigned to HUD or (b) HUD accepts reimbursement from the first lender. Thus, where HUD has advanced funds to the Borrower under the terms of the HECM program those funds are secured by the second mortgage unless there has been either: (i) an assignment of the first mortgage to HUD or (ii) reimbursement for those advances by the first mortgage lender to HUD.

Comment 3. Pursuant to its agreement with HUD the institutional first mortgage lender is obligated to notify HUD's national servicer when the first note and mortgage have been satisfied and the servicer then normally processes the cancellation of the second note and issues a release

for the HUD mortgage. Unfortunately, as with mortgage releases in general, the system breaks down at times and the release of the HUD mortgage fails to be recorded. A title examiner may seek assistance in obtaining the necessary release of the HUD mortgage by contacting either the first mortgage lender or HUD through its national program servicer at the HUD website http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/. So long as HUD can verify that: (a) the first mortgage note and mortgage have been paid in full, and (b) HUD has not expended any funds under its second note, as described in Comment 1 above, HUD will issue a satisfaction of the HUD note and a release of the HUD mortgage.

Comment 4. Practitioners should also be aware that in the context of a foreclosure of the first institutional mortgage, or any other senior lien, the existence of the HUD second mortgage, as a lien in favor of the United States, will require that the United States be made a defendant and mandate a foreclosure by sale pursuant to 28 U.S.C. 2410(c). However, there will be no statutory redemption period in favor of HUD as 12 U.S.C. 1701k provides there shall be no right of redemption in favor of the United States where its interest derives from the issuance of insurance under the National Housing Act, as amended, 12 U.S.C. 1701 et seq.

STANDARD 18.10 Effect of Failure to Release a Multi-town Mortgage or Other Encumbrance in All Towns Where It Was Recorded

A mortgage or other encumbrance that was recorded in more than one town against (a) a single parcel of land lying in more than one town, or (b) a condominium unit located in a development which is located in more than one town, but which was released in fewer than all such towns, does not impair marketability.

Comment 1. It is unnecessary for the title searcher to make inquiry regarding an unreleased mortgage or other encumbrance unless the record affirmatively discloses an intention that the mortgage or other encumbrance continue to remain of force or effect.

Comment 2. If the unreleased mortgage or other encumbrance is a "blanket" encumbrance affecting multiple parcels of land, whether contiguous or noncontiguous, then it must be released of record in every town in which a parcel is located.

Comment 3. When a unit in a condominium is located in one town, but the common elements allocated to said unit are located in an adjacent town, a release of a mortgage or other encumbrance recorded only in the town in which the unit itself is located does not impair marketability. If the release is only recorded in the town where the common elements are located and not in the town where the unit is located, then it is recommended that a certified copy of the release so recorded be obtained and recorded in the town in which the unit is located but failure to do so does not impair marketability. CL

PROFESSIONAL DISCIPLINE DIGEST

Professional Discipline Digest Volume 25, Number 3

By John Q. Gale

Prepared by CBA Professional Discipline Committee members from public information records, this digest summarizes decisions by the Statewide Grievance Committee resulting in disciplinary action taken against an attorney as a result of violations of the Rules of Professional Conduct. The reported cases cite the specific rule violations to heighten the awareness of lawyers' acts or omissions that lead to disciplinary action.

Presentment ordered for violation of Rules 1.15(b), 1.15(f) and 8.1(2) and Practice Book Section 2-27 where attorney in personal injury matter failed to pay physician pursuant to the letter of protection he had provided; failed to maintain proper IOLTA records; and failed to comply with Disciplinary Counsel request for information. *DeAngelo v. Enrico Vaccaro,* #14-0668 (6 pages)

Reprimand issued for violation of Rules 1.3, 1.4(a)(3) and 1.4(a)(4) where attorney in personal injury matter failed for four years to schedule arbitration, doing so only after grievance filed; failed to keep his client reasonably informed of status of her case; and failed to comply with client's requests for information. Attorney ordered to take six hours of in-person CLE; three hours in legal ethics and three hours in law office management; all courses to be completed within nine months. *Mozell v. Enrico Vaccaro,* #14-0709 (6 pages)

Reprimand issued by agreement pursuant to Practice Book Section 2.37(a) where attorney admits there is sufficient evidence of a violation of Rule 1.4(a)(f). *Culpepper v. Michael A. Peck,* #14-0897 (7 pages)

Presentment ordered by agreement to consolidate presentments where attorney already subject of a pending Superior Court disciplinary matter, has six presentment orders. Presentment for violation of Rules 1.3 and 1.4 in *Serrano v. Matthew Condel Couloute, Jr.,* #15-0221 (6 pages). Presentment for violation of Rule 1.3 in *Azzarito v. Matthew Condel Couloute, Jr.,*

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